

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Policies and Rules Pertaining to  
the Equal Access Obligations of  
Cellular Licensees

RM-8012

SEP - 2 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF RFB CELLULAR, INC.**

RFB Cellular, Inc. ("RFB"), by its attorneys, hereby submits its comments in response to the above-captioned petition for rulemaking (the "Petition") regarding equal access obligations of cellular licensees, filed by MCI Telecommunications Corporation. As shown below, there is no warrant for imposing equal access obligations on independent cellular carriers, particularly those who serve RSA markets. Equal access would impose excessive costs on independent cellular carriers, with little likelihood of a return for either the carriers or consumers and, in any event, equal access is not necessary when a carrier lacks bottleneck control over a service. Thus, the Commission should deny the Petition.

**I. Introduction**

RFB is an independent cellular operator and the licensee of the Frequency Block A cellular system serving the Michigan 4 - Cheboygan RSA. The Michigan 4 RSA is a resort area with a population of approximately 125,000 and is situated along Interstate 75, the major north-south route in Michigan. As the operator of a cellular system in a low-population, high-traffic RSA, RFB has designed a system with coverage focused on areas where roamers need cellular

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service and, to date, has constructed eight cells that provide service along Interstate 75 and in other high traffic areas. In many ways, RFB is typical of small, independent cellular carriers serving the nation's RSAs.

Equal access would hurt small cellular operators like RFB in many ways without providing any meaningful benefits to consumers. It would increase their costs significantly, both for equipment and for compliance with new administrative and recordkeeping burdens. Consumers would be hurt because some of the increased costs would be passed on in the form of higher rates and the remainder of the costs would limit small carriers' ability to improve their service. The only possible beneficiaries would be a few large long distance carriers, which already have the right to negotiate agreements directly with cellular licensees. In addition, the Commission should not impose these difficult burdens on independent cellular carriers who have no bottleneck control over access to the telephone network.

**II. The Costs of Equal Access, Especially to Single Market Operators, Far Outweigh Any Possible Benefits to the Public Interest.**

MCI frames the Petition as a boon for cellular consumers. The fact is that the costs of equal access for independent cellular carriers are enormous, both at the outset and on a daily basis. Any potential benefits to consumers would be far outweighed by these costs. The only possible beneficiaries of equal access are some interexchange carriers, and even those benefits would come only at the expense of other carriers, without any discernable benefits to the public.

First, there can be no question that the costs of equal access are significant. Equal access requires changes in the carrier's switching equipment, and is likely to require the carrier to purchase additional service from the local wireline telephone company.<sup>1/</sup> The cellular carrier also would have to go to considerable expense to ballot its customers for their preferred interexchange carriers, implement new procedures for accepting new customers and make special arrangements for dealing with roamer traffic.

On a daily basis, the cellular carrier would have to cope with the costs of implementing customers' equal access choices, changing presubscribed carriers and assuring that roamer traffic is routed to the appropriate IXC's. These costs are magnified by the relatively high churn rates for cellular service, which far exceed those of landline telephone companies.

These costs loom even larger for small, independent cellular operators. Unlike a BOC, which can amortize the costs of equal access across more than 10 million customers, independent cellular carriers, faced with many of the same costs, number their customers in the thousands or even the hundreds. Many smaller cellular carriers simply could not afford to implement equal access and most of those that could would have to greatly increase the prices they

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<sup>1/</sup> Many of these costs are not a factor for wireline carriers, especially BOCs, for two reasons. First, BOCs and many wireline carriers already have implemented equal access for their wireline facilities in the same area, which makes the incremental cost of cellular equal access low. Second, because wireline equal access involves both the carrier's cellular and wired customer bases, the costs of equal access are spread over a much wider number of customers.

charge their subscribers and roamers in order to recoup a portion of those costs.<sup>2/</sup>

As a single-system licensee, RFB would have an extraordinarily heavy burden.

At the same time, there would be few, if any, benefits for consumers from cellular equal access. Carriers would be forced to shift some of their costs to consumers, increasing the price of cellular service, and the increased costs also would have the effect of limiting carriers' ability to expand and improve their cellular systems. In an equal access regime, billing and collection probably would be separated for regular cellular service and long distance calls, an inconvenience for the cellular customer. Few cellular customers would experience reduced long distance bills, since they will pay retail rates to their long distance carriers.<sup>3/</sup> Moreover, roaming would become more complicated, especially if carriers implement equal access in different ways across the country. Again, the effects would be magnified in a small system like RFB's, which depends on roamer traffic much more than the larger, integrated operations of the BOC-affiliated cellular operations.

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<sup>2/</sup> Independent telephone companies face similar difficulties, a factor that led the Commission to adopt much more liberal equal access requirements for independents than the BOCs, even permitting waivers of equal access where costs outweigh the potential benefits. *MTS/WATS Market Structure (Phase III)*, 100 FCC 2d 860, 875 (1985), *recon. denied*, 59 R.R.2d 1410 (1986). Many cellular carriers have even fewer customers than the typical independent telephone company, spread over a wider area.

<sup>3/</sup> In fact, many customers could have increased long distance costs, since some cellular carriers use their ability to buy long distance service in bulk to pass on savings to their customers. These opportunities would be lost if equal access were imposed on independent cellular carriers.

The only likely beneficiaries of cellular equal access are a few interexchange carriers, and their benefits would come only at the expense of cellular carriers and the calling public. Ironically, these same carriers already have the opportunity to compete for cellular long distance through contracts with cellular carriers. What MCI wants is the opportunity to extend its advertising war with AT&T and Sprint to a new arena and a second chance in cellular markets where it already has lost the competition to be the interexchange carrier of choice. MCI itself might gain from shifting the focus of cellular long distance marketing, but competition would not. In other words, adopting equal access for independent cellular carriers would affect not whether interexchange carriers have access to the cellular long distance market but only how they reach that market. This difference has little practical effect on competition and does not justify the heavy costs, both to cellular carriers and consumers, that equal access would impose.

**III. The Concerns That Justified Landline Equal Access Do Not Apply to Cellular Carriers.**

Even if equal access would not impose crushing burdens on independent cellular carriers, the basic reasons for equal access are inapplicable to the circumstances of cellular service. Equal access was created to address the specific problem of the LEC bottleneck for local landline service. Cellular service does not implicate the same issues and, consequently, the underpinnings of landline equal access are inapplicable to cellular carriers.

The basic problem of landline interexchange service is that the local exchange carrier is the only way to reach every telephone customer in the United States. If the local carrier refuses access, there is no way for the telephone customer to obtain basic telephone service from the interexchange carrier. Thus, landline equal access provides a way to pass through the bottleneck to receive basic interexchange service.

Cellular is different. Cellular service is an optional, competitive service and, even considering the tremendous growth of cellular service over the past decade, it is dwarfed by landline telephone service.<sup>4/</sup> Cellular carriers, unlike landline carriers, are non-dominant. Consumers who wish to have cellular service always have a choice of cellular carriers and nobody needs to buy cellular service in order to have access to the basic telephone network. In short, cellular lacks the characteristics of landline carriage that led to the adoption of equal access.

Moreover, the Commission has recognized that the concerns that support equal access for bottleneck landline carriers can be outweighed by difficult circumstances. When the characteristics of a particular carrier's operations make equal access unreasonably difficult, the Commission can grant waivers of its equal access requirements. *See* Note 2, *supra*. If equal access can be defeated even for a landline carrier, it is evident that any claim that equal

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<sup>4/</sup> For instance, MCI notes that there are somewhat more than 8 million cellular access lines in operation across the country. Petition at 2. This is perhaps half of the total number of landline telephone lines in the New York MSA alone.

access is necessary for a non-dominant, competitive carrier should have little weight.

These facts make it impossible to justify requiring independent cellular carriers to provide equal access. Independent cellular carriers, those with no affiliation with landline telephone companies, lack the ubiquity of service and the market power that made the Commission and the MFJ court conclude that equal access was appropriate for landline telephone service.<sup>5/</sup> In other words, a remedy designed for a bottleneck monopoly of an essential service is ill-suited for a competitive, optional service provided by a carrier with no connection to the landline monopoly.

#### **IV. Conclusion**

The Commission should deny the Petition and close this proceeding. Imposing equal access on independent cellular carriers would hurt the carriers and consumers alike, with no discernable benefits. The costs of equal access make it particularly difficult to justify for independent cellular carriers with small customer bases and no landline customers who can share the burdens of implementing equal access. At the same time, the underlying reasons for landline equal access do not apply to a competitive, optional service like cellular. For these reasons, RFB Cellular, Inc. respectfully submits that the Commission should

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<sup>5/</sup> MCI attempts to sidestep this issue by asserting that cellular is a plausible substitute for landline service. Petition at 4. The Petition offers no evidence whatsoever that cellular service actually is used in that way.

deny the Petition for Rulemaking of MCI Telecommunications Corporation and close this matter without any further proceedings.

Respectfully submitted,

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September 2, 1992



CERTIFICATE OF SERVICE

I, Justine N. Menapace, hereby certify that today on this 2nd day of September, 1992, I caused a copy of the RFB CELLULAR, INC. to be served by first-class mail, postage prepaid, or hand delivery to the following:

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